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U.S. Department of Justice

Immigration and Naturalization Service

identification data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Vermont Service Center Date: MAY 06 2002

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C)

IN BEHALF OF PETITIONER: [redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myra L. Mooney

for Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The immigrant visa petition was revoked by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant minister pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), in order to employ him as a minister at an salary of $350 per week.

The Form I-360 visa petition was filed on September 27, 1999 and approved on March 15, 2000. Upon further review, the center director concluded that the petition had been approved in error and properly issued a notice of intent to revoke the approval. After reviewing the petitioner's response, the director revoked the petition in a decision dated April 11, 2001.

The director revoked approval on the grounds that the petitioner failed to establish that the beneficiary had been continuously carrying on the vocation of a minister for at least the two years preceding filing of the petition or that the church had the ability to pay the proffered wage, or the sum of wages for all alien workers petitioned by the church.

On appeal, counsel for the petitioner asserted that the beneficiary is an evangelist, not a minister of religion, and that he has been employed by the petitioner since January 1997.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
>
> (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section

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501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner in this matter is a church claiming affiliation with a denomination of the same name. The petitioner is recognized by the Internal Revenue Service with the appropriate tax exempt status. The petitioner did not provide a description of the size of its congregation or the number of employees. The beneficiary is a native and citizen of Jamaica who was last admitted to the United States on January 18, 1997, in R-1 classification as a religious worker.

In order to establish eligibility for classification as a special immigrant minister, the petitioner must satisfy each of several eligibility requirements.

A petitioner must also establish that the beneficiary is qualified as a minister as defined in these proceedings.

8 C.F.R. 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

(B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not

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authorized to perform such duties.

The petitioner claims to be affiliated with an established religious denomination, but failed to furnish any description of the organization or operation of that denomination in the United States. The petitioning church's tax exemption was granted on an individual basis. In support of the instant petition, the petitioner asserted that the beneficiary was ordained as a minister by an affiliated church in Jamaica and was again ordained by the petitioner in the United States in January 1997. The petitioner furnished a copy of a "ministerial license" it issued to support the claim.

On review, it is concluded that the evidence of record is insufficient to establish that the beneficiary is a qualified minister. First, the petitioner has not explained the standards required to be recognized as a minister in the denomination or shown that the beneficiary has satisfied such standards.

Second, the petitioner did not provide a letter from an authorized official of the denomination verifying the denomination's recognition of his credentials as a minister. The statement from an official of the individual church cannot be accorded the necessary evidentiary weight. To establish that an alien is qualified in a religious position and has been carrying on such a position, acceptable evidence includes a letter from a Superior of Principal of the denomination in the United States. See Matter of Varughese, 17 I&N Dec. 399 (BIA 1980).

Third, simply producing documents purported to be certificates of ordination, which are not based on theological training or education, is not proof that an alien is entitled to perform the duties of a minister. Matter of Rhee, 16 I&N Dec. 607 (BIA 1978).

Counsel asserts on appeal that the beneficiary is not a minister and that the petitioner seeks classification of the beneficiary as a lay religious worker in a religious occupation. This claim directly contradicts the petitioner's own statements in the job-offer letter dated April 21, 1999, signed by the president of the church. The assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533 (BIA 1988); Matter of Laureano, 19 I&N Dec. 1 (BIA 1983); Matter of Ramirez-Sanchez, 17 I&N Dec. 503 (BIA 1980).

A petitioner must also establish that the alien beneficiary was continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

> All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for

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at least the two-year period immediately preceding the filing of the petition.

In the case of special immigrant ministers, the alien must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought and must intend to be engaged solely in the work of a minister of religion in the United States. Matter of Faith Assembly Church, 19 I&N 391 (Comm. 1986).

The petition was filed on September 27, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously and solely carrying on the vocation of a minister of religion since at least September 27, 1997.

In this case, an official of the petitioning church testified that the beneficiary had been a minister in Jamaica and has served as a minister with the petitioner since January 1997. However, the petitioner failed to submit any proof of the claimed employment such as the beneficiary's tax records. The petitioner's own testimony is insufficient without corroborating documentation. Merely going on record without supporting documentary evidence, is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

In addition, the petitioner did not provide a detailed description of the beneficiary's means of financial support in this country. Absent a detailed description of the beneficiary's employment history in the United States, supported by corroborating documentation such as tax documents, the Service is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period.

The petitioner also made no claim and submitted no evidence that the beneficiary had been engaged "solely" as a minister of religion during the two-year period or that he would be solely engaged as a minister with the United States church.

A petitioner also must demonstrate its ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part, that:

> Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual

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reports, federal tax returns, or audited financial statements.

The petitioner has not stated the number of persons it employs or the number of special immigrant petitions it has filed. The petitioner must establish the ability to pay the sum of all wages offered. As this figure is unknown, this requirement has not been satisfied.

In addition, the petitioner submitted a copy of a 1997 Form 990 tax return. The form reflects gross revenues of $261,869. However, the return also reflects on line 1(C) that $150,665 of that revenue was from government contributions. The claim that the petitioning church received more than half of its revenues from governmental sources would be highly unusual and is not credible. The tax return was not a certified copy. Accordingly, the Service would require a certified copy of the petitioner's tax return to establish the ability to pay the proffered wage.

The petitioner also must demonstrate that a qualifying job offer has been tendered.

8 C.F.R. 204.5(m)(4) states, in pertinent part, that:

> *Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

In this case, the petitioner has not shown that the alien would be solely engaged in a religious vocation in the United States. Therefore, it has not tendered a qualifying job offer.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.